

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM A MILLER
Claimant

CITY OF FORT MADISON
Employer

APPEAL NO. 14A-UI-05322-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/20/14
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 12, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 12, 2014. Claimant participated personally. Employer participated by Patrick O'Connell. Employer's Exhibits A-S were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 22, 2014. Employer discharged claimant on April 17, 2014 because of insubordination in continuing to ignore an employer directive.

On or around July 23, 2014 a department memo was issued explaining to city employees that there were new time clocks which were being installed in the city. Forty-one city employees were subject to the new system. Employees were to clock in and out at the beginning and ending of their shifts and at the beginning and ending of their paid one-half hour lunch. Claimant at times did not bring a lunch and chose on many occasions not to clock in and out for lunch. The new system enabled supervisors to keep better track of employees and their schedules when they punched in and out for lunch. It also allowed directors to ensure that lunches were staggered. Claimant was given the option of swiping in and out for lunch within a very short time period if he so chose.

Claimant was issued a number of warnings, verbal and written and given suspensions prior to his dismissal. Claimant consistently refused to follow the directive, as he felt it unethical to demand that people clock in and out for lunch. At the same time, claimant did, at times, eat a lunch during his shift.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination. Claimant was repeatedly warned concerning this policy. He made a conscious and repeated choice that he would not follow the order.

The last incident, which brought about the discharge, constitutes misconduct because consistent insubordination after having had many opportunities to voice objections would lead to employees not complying with rules and regulations. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 12, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css